

## ARTICLE 4

### PROCEDURES FOR THE SUBMISSION AND APPROVAL OF PLANS

#### 4.1 Conceptual Plan

- 4.1.1 General. A conceptual or sketch plan and assessment of possible environmental impacts may be submitted by the Applicant to the Board for informal discussion with the Board prior to submission of a Preliminary Plan and/or Definitive Plan. The submission may be in sketch or draft form as determined by the Applicant.

#### 4.2 Preliminary Plan

- 4.2.1 General. A preliminary plan of a subdivision may be submitted by the Applicant to the Board of Health and to the Board for discussion and approval by the Board. The submission of such a Preliminary Plan will enable the subdivider, the Board, other municipal agencies, and owners of property abutting the subdivision to discuss and clarify the problems of such subdivision before a Definitive Plan is prepared. Therefore, it is strongly recommended that a Preliminary Plan be filed in every case. A properly executed application, Form B (See Forms), shall be filed with the Preliminary Plan submitted to the Board.

- 4.2.2 Submittal Requirements. In the event that a preliminary plan is submitted, that plan, along with a properly executed Form B, shall be submitted by delivery at a regularly scheduled business meeting of the Board or by registered or certified mail to the Board, in care of the Town Clerk. If so mailed, the date of mailing shall be the date of submission of the plan. In addition, written notice of such submission using Form B shall be given by the Applicant to the Town Clerk by delivery or by registered or certified mail. The Town Clerk shall give a written receipt, if requested, by the person who delivered such notice. With submission of the Preliminary Plan, the Applicant shall also file a copy of said written notice and receipt with the Planning Board. The following shall be submitted by the Applicant:

- a. Two (2) contact prints, dark line on white background.
- b. One (1) contact print, as in "a" above filed with Board of Health and where applicable, the Conservation Commission and the Board of Water Commissioners. The Applicant shall obtain a receipt from the Board of Health and the Conservation Commission and the Board of Water Commissioners, copies of which shall be submitted to the Planning Board.
- c. Where any contiguous unsubdivided land is owned or controlled by the owner or Applicant, a sketch plan, shall be submitted showing: the proposed subdivision parcel and streets, the boundaries of the contiguous unsubdivided land, and a possible or prospective street layout.
- d. An initial nonrefundable application fee of \$500.00 plus \$100.00 for each lot shall be payable to the Town of Topsfield at the time of submission.

- 4.2.3 Contents. The Preliminary Plan shall be drawn on tracing paper twenty-four inches by thirty-six inches (24" x 36") with pencil at a scale of one inch equals forty feet (1" = 40') and shall show sufficient information as listed below, about the subdivision to form a clear basis for review and discussion and for the preparation of the Definitive Plan.

- a. Subdivision name, boundaries, north point, date of submission, required scale, legend, and the title, "Preliminary Plan."
- b. Names and addresses of record owner and Applicant.
- c. Name, address, and seal of the designer, engineer, or surveyor who prepared said plan.
- d. Names and plan location of all abutters indicating limits of contiguous boundaries and those owners of land separated from the subdivision only by a street, as determined from most recent local tax list (Form C).

The following information shall be shown in a preliminary (general) manner:

- e. Existing and proposed lines of streets, ways, rights-of-way, easements, including purpose, and any public or common areas within the subdivision.
- f. Proposed system of drainage including the location of natural waterways; indicating the direction of flow, and all water bodies adjacent to or within the proposed subdivision or within one hundred (100) feet of its bounds or areas classified as wetlands in accordance with M.G. L. Chapter 131, SECTION 40 and 310 CMR (Code of Massachusetts Regulations) formulated by DEQE as amended.
- g. All soil logs and location of percolation test sites shall be shown on the plan as well as data obtained from such. Also included shall be water utility system data inclusive of: location, water main diameter, valve locations, and any other pertinent data.
- h. Boundary lines or proposed lots with dimensions and area.
- i. Location, names, and present widths of adjacent streets, bounding, approaching, or within four hundred (400) feet of the subdivision.
- j. Topography of the land at ten (10) foot contour intervals are required by the Board. Two (2) foot contour intervals when required by the Board. The appropriate U.S.G.S. map, enlarged to a scale of one inch equals forty feet (1" = 40') is acceptable. The contour map should also show such pertinent information as watercourses, ledge out croppings, and a log of any borings that may have been taken.
- k. Profiles of proposed streets.
- l. A locus map of the vicinity at a scale of one inch equals six hundred feet (1" = 600'), showing the proposed subdivision area in conjunction with other roadways and properties. A key map at a scale of one inch equals two hundred feet (1" = 200'), showing the same information as the locus map.
- m. When multiple sheets are necessary, match lines shall be used and referenced, and an index plan, graphically indicating the arrangement of said multiple sheets, shall be submitted on one standard (24" x 36") sheet at a suitable scale.

During discussion of the Preliminary Plan, the complete information required by the Definitive Plan, SECTION 4.3 and the financial arrangements, SECTION 4.9.1 will be developed.

4.2.4 Action by Board. The Board may give such Preliminary Plan its approval, with or without modification. Such approval does not constitute approval of a subdivision.

The Board may also disapprove the plan. A disapproval shall be accompanied by a detailed statement of reasons for the action.

Notice of its action must be given by the Board by registered mail to the Applicant and the Town Clerk within forty-five days (45 days of the date of submission). Failure to act within that time shall be considered as approval of the Preliminary Plan.

#### 4.3 Definitive Plan

4.3.1 General. A Definitive Plan shall be governed by the Subdivision Regulations in effect at the time of submission of such plan or in effect at the time of the submission of a Preliminary Plan provided that a Definitive Plan evolved therefrom shall have been submitted to the Planning Board within seven (7) months from the date of submission of the Preliminary Plan.

A Definitive Plan shall be governed by the zoning bylaw in effect at the time of submission of such plan or in effect at the time of submission of the Preliminary Plan from which a Definitive Plan is evolved in accordance with the provisions of SECTION 6 Chapter 40A of the General Laws of the Commonwealth.

4.3.2 Submittal Requirements. The Definitive Plan, along with a properly executed Form B, shall be submitted by delivery at a regularly scheduled business meeting of the Board or by registered or certified mail to the Board, in care of the Town Clerk. If so mailed, the date of mailing shall be the date of submission of the plan. In addition, written notice of such submission using Form B shall be given by the Applicant to the Town Clerk by delivery or registered or certified mail. The Town Clerk shall give a written receipt, if requested, by the person who delivered such notice. With submission of the Definitive Plan, the Applicant shall also file a copy of said written notice and receipt with the Planning Board. The following shall be submitted by the Applicant:

- a. An original drawing of the Definitive Plan, another duplicate Mylar reproducible, and six (6) contact prints thereof, dark line on white background. The original drawing will be returned after approval or disapproval.
- b. Three (3) contact prints, as in "a." above, filed with the Board of Health, Highway Department and reviewing engineer. The Applicant shall obtain a receipt from the Board of Health, a copy of which shall be submitted to the Planning Board.
- c. Reduced sized plans (11" x 17") and an application booklet shall be submitted to all reviewers (Police Department, Fire Department, Water Department, etc.)
- d. Additional reports such as traffic reports shall be sent to the Planning Board, the Highway Department and the reviewing engineer.
- e. A sketch plan showing a possible or prospective street layout for any contiguous unsubdivided land owned or controlled by the

owner of Applicant unless such a plan has already been submitted to the Board under the provisions of ARTICLE 4.

- f. A nonrefundable fee of \$2,000.00 base fee, plus \$1,000.00 for each lot or a \$2,000.00 base fee, plus \$500.00 for each lot if approved preliminary plan is on file. A fee of \$3,000.00 per lot will be assessed for major changes. Major changes are defined as an increase in the number of lots and/or change in the road length by than 10 percent (10%). Additional fees shall be assessed when deemed appropriate by the board, such as, cost of legal notices and technical reviews for each lot or dwelling unit in the subdivision payable to the Town of Topsfield at the time of submission. Additional costs will be billed as incurred to cover the cost of advertising and notices.
- g. List of Abutters (Form C). Name and mailing address of each of the abutters as they appear in the most recent tax list, including owners of land separated from the subdivision only by a street. The Applicant shall obtain a certificate of the Board of Assessors that all abutters are listed.
- h. One copy of the Test Pit Logs to the Planning Board and the Board of Health.
- i. One copy of the of Stormwater Management Reports to the Planning Board, Highway Department and Reviewing Engineer.
- j. In the event that the Applicant is a corporation, evidence from the Clerk of the Corporation certifying authorization of individual(s) to act for the Corporation.
- k. In connection with any definitive plan, the Applicant shall also submit an Environmental Impact Statement which shall provide the information shown in Appendix A to these Rules and Regulations and clearly show the relation of the proposed project to the total environment of the Town and its inhabitants. Such Appendix A shall be considered a part of these Rules and Regulations.
- l. In preparing the statement, the Applicant shall refer to the Soil Survey Maps and Manual, prepared for Topsfield by the Soil Conservation Service, U.S. Department of Agriculture, and to the Wetlands Maps, adopted May 4, 1982 and any amendments thereof on file at the Town Hall. Any maps submitted as part of the statement shall be at a scale of one inch equals six hundred feet (1" = 600').
- m. The Board may waive any section, or sections, of the Statement which it deems inapplicable to the proposed project or may require additional information on any aspect of the statement. The Board may also require that the statement or appropriate sections thereof be prepared by a Registered Professional Engineer, Architect or other professional acceptable to the Board. The developer should discuss the requirements with the Board prior to preparation of the statement.
- n. One electronically formatted version of all of the above may be required.

- o. The Planning Board reserves the right to request additional copies as necessary.

#### 4.3.3

Contents. The Definitive Plan shall be clearly and legibly drawn in black India ink upon Mylar or linen. The plan shall be at a scale of one inch equals forty feet (1" = 40') or such other scale as the Board may accept to show details clearly and adequately. Sheet sizes shall be twenty four inches by thirty-six inches (24" x 36") with a one inch (1") border on all sides. The Definitive Plan shall contain at least the following information:

- a. Table of Contents.
- b. Subdivision name, boundaries, north point, scale, legend, and date of submission. In addition, space shall be allocated for revisions made and dates of said revisions.
- c. Names and addresses of record owner and Applicant.
- d. Name and address of the engineer and/or surveyor who prepared the plan with respective certificates and seals. Certification by the surveyor that all surveying conforms to the Technical Standards for Property Surveys of the American Congress on Surveying and Mapping and, where applicable, to the requirements of the Land Court shall appear on the plan. Source or sources of information about the location of the boundaries. All plans submitted shall conform to 250 CMR, 1 through 5.
- e. Names and plan locations of all abutters, indicating limits of contiguous boundaries and those owners of land separated from the subdivision only by a street. This shall agree with Form C.
- f. Existing and proposed lines of streets, ways, turnarounds, including whether permanent or temporary, lots, rights-of-way, easements, including purpose, zoning district boundaries, and public or common areas within the subdivision. (The proposed names of proposed streets shall be shown in pencil until they have been approved by the Board.)
- g. Sufficient data, including lengths, bearings, radii, tangent distances, and central angles to determine the exact location, direction, and length of every street and way line, lot line and boundary line, and to establish these lines on the ground; all bearings shall be connected with adjoining subdivisions or county or state road layouts. Bearings and distances shall be given to the nearest 0.01 degree and foot respectively and shall be referenced to the nearest county or state or U.S.G.S. Monument.
- h. The location of all permanent monuments identified as to type and whether existing or proposed.
- i. Boundary lines, areas in square feet, and dimensions of all proposed lots, with all lots designated numerically and in sequence.
- j. Boundary lines of the entire original tract of land if the particular lot or lots to be recorded has been severed from a larger tract; or, if not practicable, the boundary lines of the entire original tract shall be shown on an attached sketch.
- k. Location, names, and present width of streets, bounding, approaching, or within four hundred feet (400') of the subdivision.

l. Major site features, such as existing stone walls, fences, buildings, large trees eight inches (8") in diameter or larger measured four feet (4') above the ground within the proposed right-of-way and 20 feet (20') beyond either side, rock ridges, and outcroppings, historic features, wooded areas, bridle trails or paths, natural waterways indicating direction of flow, and all waterbodies or areas classified as wetlands. In the case of heavily wooded areas, the outline of the area shall be shown and so indicated.

m. A locus map at a scale of one inch equals six hundred feet (1" = 600') included in the lower left-hand corner of the Definitive Plan showing the right-of-way lines of all proposed streets in the subdivision, the subdivision's boundaries and the subdivision's location in relation to two or more existing streets, or portions thereof shown and readily identifiable as to locus in the Town.

A key map at a scale of one inch equals two hundred feet (1" = 200') showing the same information as the locus map to such accuracy that the Town Assessor's Maps may be placed over the key map for purposes of actual transfer to the Assessor's Maps.

n. Suitable space to record the action of the Board and the signatures of the members of the Planning Board on each sheet of the Definitive Plan. Where the Applicant elects to secure completion of required improvements by covenant (rather than bonds or surety), there shall be a notation above such space as follows:

Approved \_\_\_\_\_, subject to covenant conditions set forth in a covenant executed by \_\_\_\_\_, dated \_\_\_\_\_, and recorded South Districted, Essex County Registry of Deeds, Book No. \_\_\_\_\_, Page No. \_\_\_\_\_.

Items o, p, q, r, s, and t shall be submitted on combined or separate sheets as is necessary to clearly show the required information to the satisfaction of the Board. The Plans shall be at a scale of one inch equals forty feet (1" = 40') or such other scale as the Board may accept to show details clearly and adequately. Sheet size shall be twenty-four inches by thirty-six (24" x 36") inches with a 1 inch border on all sides.

o. Existing and proposed topography (sufficiently differentiated) with two foot (2') intervals, unless the Board agrees that the natural surface of the ground may be adequately represented by contours with larger intervals or by figures of elevations, extending one hundred and fifty feet (150') on either side of all proposed roads, and at five foot (5') for the balance of the subdivision; existing elevations, location and direction of flow of all natural watercourses, brooks, streams and drainage ditches with existing spot elevations from their respective source or entrance into the proposed subdivision to their termination or exit therefrom; all ponds, swamps and low areas subject to flooding, with elevations; all existing drainage structures with elevations; all outcroppings of rock and ledge. Show by shading or other method the areas within the subdivision that are to be excavated or filled.

p. General soil types and information as to the suitability of each lot for on-lot sewage disposal and the depth to the groundwater table based on the most recent U.S. Conservation Services Operations Soils Survey; location, results, and dates of all borings; and the level of the water table

and results of soil percolation tests on all lots, indicating elevation at which such tests were taken, elevation of proposed leaching facility, and the soil conditions at the level of the tests and proposed grade. Depth to groundwater table shall be determined at maximum groundwater elevation. Maximum groundwater elevation shall mean the height of the groundwater table when it is at its maximum level as measured relative to the undisturbed ground level elevation. This level shall be determined during the months of December through April. Percolation tests shall not be made in frozen ground. All tests shall be executed at the Applicant's expense and in the presence of an agent of the Board of Health and in accordance with ARTICLES of the Commonwealth of Massachusetts Sanitary Code and the regulations of the Town of Topsfield Board of Health.

- q. Location and species of proposed street trees and location of existing trees to be retained with trunks of over eight inches (8") in diameter, measured four feet (4') above the finished grade, within the proposed right-of-way and twenty feet (20') beyond on either side.
- r. Location of proposed street lights and sidewalks.
- s. Existing and proposed profiles of the centerline of proposed streets of horizontal scale of one inch equals forty feet (1" = 40') and a vertical scale of one inch equals four feet (1" = 4') U.S.G.S. datum (Mean sea level) if such reference datum has been established with 1/2 of a mile of the subdivision. If such datum is not available, an appropriate datum shall be used and a permanent bench mark established within the subdivision with adequate description shown on the plan. Profiles shall also indicate the location of any intersecting public or private ways, and the location and size of existing and propose storm drains, water mains, and sewers and their appurtenances, and other underground utilities to be placed in the right-of-way. The stationed centerline corresponding to the profile upon which the above profiles are taken shall be shown in plan view. The design computations for determining the elevations, grades, and sight distances of horizontal and vertical curves shall be submitted with said profiles.
- t. Proposed layout of storm drainage, including all interceptor drains and site drainage systems required by particular soil conditions, water supply, and sewage disposal and all other underground utility (gas, electric, etc.) systems. The design computations for determining the required sizes of the storm drainage, water supply and sewer systems shall be submitted with the said proposed utility layout.
- u. When multiple sheets are necessary, match lines shall be used and referenced, and an Index Plan, graphically indicating the arrangement of said multiple sheets, shall be submitted at a suitable scale.
- v. A Site Plan showing layout of the entire subdivision if submitted by section including street names, lot numbers, and areas at a scale suitable to the Board.
- w. Any other pertinent information, unique to the particular subdivision, which the Board shall request, including necessary engineering calculations to provide assurance to the Board that fire protection, vehicular traffic flow, and all other safety precautions are being provided.

- x. Location of surveyor stakes corresponding to the layout of the ways as shown on the Definitive Plan. Such stakes, as placed on the site, shall be considered to be a requirement for submission of the Definitive Plan and shall be maintained on the site until replaced by permanent monuments.

#### 4.4 Suitability of the Land

- 4.4.1 Review by Board of Health. At the time of filing of the Definitive Plan, the Applicant shall file, in accordance with ARTICLE 4, SECTION 3 of these Rules and Regulations; with the Board of Health, two contact prints of the Definitive Plan, dark line on white background, including all items of the Contents of Definitive Plan described above and any supplemental information required by rules of the Board of Health.

The Board of Health shall report to the Board in writing approval or disapproval of said plan, and in the event of disapproval shall make specific findings as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefore in such report, and, where possible, shall make recommendations for the adjustment thereof. Failure of the Board of Health to make such a report within forty-five (45) days after the plan is filed with their office shall be deemed approval by such Board of Health. Such Board of Health shall send a copy of such report, if any, to the Applicant.

- 4.4.2 Wetlands Protection. The surveyed borders of flood plains, marshes, ponds, water courses, and wetlands shall be included in the Definitive Plan in accordance with requirements and definitions of MGL Chapter 131, SECTION 40 and 310 CMR, and the Topsfield Wetlands Protection By-Law as they may be amended.
- 4.4.3 Soil Surveys. Soil surveys to establish the suitability of the land for the proposed storm and sanitary sewerage installations shall be submitted. Soil percolation tests shall be conducted in accordance with requirements of ARTICLE V of the State Sanitary Code and their results shall be submitted. The location of the test and soil observations pits shall be shown on the Definitive Plan.

- 4.5 Review by Town Agencies  
The Applicant shall request, before the Public Hearing, using Form D, that the appropriate Town Boards and Commissions comment on the design of their respective services. Where a bond is to be filed, cost estimates of the required work shall be prepared by the Applicant's engineer and reviewed by the various Town Departments.

- 4.6 Public Hearing  
Before approval, modification and approval, or disapproval of the Definitive Plan is given, a public hearing shall be held by the Board. Notice of the time and place of the hearing and of the subject matter, sufficient for identification, shall be given by the Board at the expense of the Applicant by advertisement in an official publication or newspaper of general circulation in the Town of Topsfield in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing. A copy of said notice shall be sent by registered or certified mail to the Applicant and by regular mail to all owners of land abutting upon the subdivision or separated from such land only by a street as appearing in the most recent tax list. (Form C).

- 4.7 Approval, Modification and Approval, or Disapproval  
The Planning Board shall take action on the Definitive Plan after the required hearing and after the report of the Board of Health as provided in the preceding section or after the lapse of forty-five (45) days without such report. The Planning Board shall approve, or, if such plan does not comply with the Subdivision Control Law or these Rules and Regulations or the



recommendations of the Board of Health shall modify and approve or shall disapprove such plan. The action of the Planning Board in respect to such plan shall be by vote, copies of which shall be certified and filed with the Town Clerk and sent by delivery, registered or certified mail, postage prepaid to the Applicant at his address stated on the application (Form E). Favorable action shall require a majority of the Planning Board members.

If the Planning Board modifies or disapproves such plan, it shall state with its vote the reasons for its action. In the event of disapproval, the Planning Board shall state in detail wherein the plan does not conform to these Rules and Regulations or to the recommendations of the Board of Health. The Board shall revoke its disapproval and approve a plan which, as amended, conforms to these Rules and Regulations or recommendations of the Board of Health.

Failure of the Planning Board either to take final action or to file with the Town Clerk a certificate of such action regarding a plan submitted by an Applicant within 90 days after such submission, or such further time as may be agreed upon at the written request of the Applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed by the Planning Board with the Town Clerk.

Final approval, if granted, shall be endorsed on the reproducible drawing of the Definitive Plan by the signatures of the majority of the Planning Board but not until the statutory 20-day appeal period has elapsed following the filing of the certificate of the action of the Planning Board with the Town Clerk and said Clerk has notified the Planning Board that no appeal has been filed, or if appeal has been taken not until the entry of a final decree of the court sustaining the approval of such plan. After the Definitive Plan has been approved and endorsed, the Applicant shall furnish the Planning Board with two (2) prints as recorded and stamped at the Registry of Deeds, and the Highway Surveyor, Building Inspector, Board of Health, Board of Selectmen, and the Assessor with one print each. No release of lots shall be made prior to receipt of these prints.

Final approval of the Definitive Plan does not constitute the laying out or acceptance by the Town of streets within a subdivision which action is reserved by statute to the Town Meeting.

#### 4.8 Recording of Plan

Within ten days after the Definitive Plan, as approved and endorsed, has been recorded at the South District, Essex County Registry of Deeds and, in the case of registered land with the recorder of the Land Court, the Applicant shall notify the Board in writing of the date and file number, as appropriate, of such recording.

At the Time of recording, all public easements shall be duly documented and copies thereof sent to the Board.

Upon receipt of notification of recording, the Board shall file one print of the Definitive Plan with the Inspector of Buildings or his appointed agent. Unless the Inspector of Buildings or his appointed agent has received such print as required in ARTICLE 4, SECTION 7, he shall issue no permit for a building on any lot within the subdivision. Further, in accordance with the statute, where approval with covenant is noticed thereon, they shall issue no permit for the construction of a building on any lot within the subdivision except upon receipt from the Board of a copy of the Certificate of Performance, (Form L), releasing the lot in question.

#### 4.9 Performance

- 4.9.1 Performance Guarantee. Before endorsement of the Board's approval of a Definitive Plan of a subdivision, the Applicant shall agree to complete the required construction of ways and the installation of municipal services as laid out in the Definitive Plan for all lots in the subdivision, such construction and installation to be secured in accordance with SECTION 81-U of the Subdivision Control Law by one, or in part by one and in part by the other, of the following methods which method may be selected and from time to time be varied by the Applicant with the approval of the Board.

a. Approval with Bonds and Surety

Before endorsement of the Board's approval of the Definitive Plan of a subdivision, the Applicant shall either file a surety company performance bond (Form G) or provide a deposit of money or negotiable securities (Form F) in an amount determined by the Board, which may consult with the appropriate Town Boards or Commissions (See Form D), to be sufficient to cover performance of the construction of ways and the installation of municipal services and not covered by a covenant under Item b. below. Such bond or security, if filed or deposited, shall be approved as to form and manner of execution by the Board and as to acceptability of the surface by the Board and shall be contingent on the completion of such improvements within eighteen (18) months of the date of receipt of bond or surety by the Board or within two (2) years of the date of approval of the Definitive Plan by the Board, whichever is earlier. The Board may require that the time be specified within which such construction and installation shall be completed as a condition for approval. If the improvements are not completed within this period, the plan may be rescinded and may be resubmitted for approval under the existing rules and regulations. At the discretion of the Board, a time extension may be granted. See SECTION 4.10, Mod. Amend. or Rescission.

b. Approval with Covenant (Form H)

Instead of filing a bond or depositing a surety, the Applicant may request approval of his Definitive Plan on condition that no lot in the subdivision shall be sold and no building shall be erected thereon until the construction of ways and municipal services within the subdivision are constructed and installed so as to serve the lots adequately. The Board may give approval with the condition that the Applicant will fulfill all requirements of the Board of Health and he will complete all such ways and services within the time period the Board specified or else the Board's approval shall be automatically rescinded.

Such conditions either shall be contained in a separate agreement (Form H) or shall be referred to on the plan and recorded in the Registry of Deeds and when the Applicant has completed the required improvements for any lots in a subdivision, he may request a release for said lots. The Board shall then submit to each involved Board or Commission Form I which shall be completed and returned by said Board or Commission. When Form I has been received indicating satisfactory performance, the Board shall then execute and deliver to the Applicant such Release, which shall be in form for recording in the Registry of Deeds (Form L).

4.9.2 Reduction of Bond or Surety. The penal sum of any such bond, or the amount of any deposit held under clause "(a)" of ARTICLE 4, SECTION 9.1 above, may from time to time, be reduced by the Board and the obligations of the parties thereto released by said Board in whole or part. If release is by reason of covenant, a new plan of the portion to be subject to the covenant shall be required.

4.9.3 Alternate Method of Guaranteeing Performance. Following the recording of a first mortgage on a lot or lots in the subdivision given as security for advances to the subdivider by a lender, the Board may, at its option, release lots from the operation of the covenant given pursuant to clause b, of ARTICLE 4, SECTION 9.1 above without receipt of a bond or deposit of money upon delivery to the Board of an agreement with the Board, which agreement shall be executed by the Applicant and the lender of sufficient funds otherwise due the Applicant to

secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the Applicant upon completion of various stages of the work and shall further provide that in the event the work is not completed within the time set forth by the Applicant, any funds remaining undisbursed shall be available for completion.

4.9.4 Inspection of Construction Performance. At the appropriate stages of construction of the improvements specified in a subdivision, the Applicant shall submit to the appropriate Town Authority a Request for Inspection of Construction of Improvements (Form J) specifying that improvement to be inspected and shall notify the Board of his completion of such improvements.

4.9.5 Release of Performance Guarantee. Upon the completion of the construction of ways and the installation of municipal services in a subdivision, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the Applicant shall send by registered or certified mail to the Town Clerk and to the Board a written statement in duplicate that the said construction or installation in connection with which such bond, deposit or covenant has been given has been completed in accordance with the layout in the Definitive Plan. If the Board determines that said construction or installation has not yet been completed, it shall specify in writing to the Town Clerk and to the Applicant in a notice sent by registered or certified mail to him the details wherein said construction and installation fails to comply with the requirements contained in the Definitive Plan Layout.

Upon failure of the Board to act on such application within forty-five (45) days after the receipt of the application by the Town Clerk, all obligations under the bond shall cease and terminate by operation of law, and any deposit shall be returned, except that a continuing bond or deposit of five dollars (\$5.00) per linear foot of roadway shall be retained for one (1) year after application of the finished road surface or until acceptance of the road by Town meeting without condition, whichever is earlier, and any such covenant shall become void. In the event that said 45 day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

4.9.6 Evidence of Satisfactory Performance. Before the Board releases the interest of the Town in a performance bond or deposit or, in the case of approval with covenant, issues a release of covenant:

- a. The Applicant shall file with the Board a certified copy of the layout plan with accompanying profiles for each street in the subdivision. Certification shall be by the engineer and surveyor employed by the Applicant at his own expense, and shall indicate that all streets, sidewalks, sewers, storm drains, and water mains, and their appurtenances have been constructed in accordance with the lines and grades of said plan and are accurately located as shown thereon. The Applicant shall also file a street acceptance plan or plans, as the case may be, suitable for recording in a form acceptable to the Board and showing such data and boundaries as is necessary for the Town to properly accept the street or streets shown thereon (see ARTICLE 5, As-Built Plans).
- b. The Applicant shall file a properly executed petition (Form M) in duplicate petitioning the Board of Selectmen to insert an application for acceptance of the streets within his subdivision in the Warrant for Annual Town Meeting.

- c. The Board shall then notify the various involved Town agencies using Form I and shall obtain in writing, using Form I from these agencies a statement that all work required by these Rules and Regulations has been inspected by them and completed in the subdivision and that they have approved the methods of construction and materials used in the performance of such work.
- d. The Board shall obtain in writing (Form I), from the Board of Health, a statement that each already installed on-lot sewerage system was installed in accordance with the Topsfield Board of Health's Rules and Regulations and Articles of the Sanitary Code of the Commonwealth of Massachusetts.
- e. The Applicant may be required to execute an instrument, in a form approved by the Board, transferring to the Town or to an approved public utility company, without cost, valid unencumbered title to all sanitary sewers, water mains, and appurtenances thereto, and other utilities constructed and installed in the subdivision or approved portion thereof, and conveying to the Town or to an approved public utility company without cost and free of all liens and encumbrances, perpetual rights and easements to construct, inspect, repair, renew, replace, operate, and forever maintain such storm utilities, with any manholes, conduits, and other appurtenances, and to do all acts incidental thereto, in, through, and under the whole of all streets in the subdivision or approved portion thereof, and if any such sewers or water mains have been constructed and installed in land not within such streets, then in, through, and under a strip of land extending fifteen (15) feet in width on each side of the centerline of all such drains and water mains. The Board may require greater than fifteen (15) feet in width on each side of the centerline where it deems necessary.
- f. Applicant shall provide written evidence that instruments of conveyance of open spaces in an Open Space subdivision have been reviewed by all and are acceptable in form by Town Counsel.

4.9.7 Street Acceptance Procedure. Applicant shall provide the Town Clerk with the following:

- a. A request in writing to the Town Clerk and the Planning Board that the Town accepts any and all streets in the subdivision.
- b. A deed to the land with a complete legal description of the street or streets satisfactory to the Town Counsel.
- c. Instruments suitable for recording all easements shown on the plan, not included in the street or ways, for drainage, sewer, and water. The easements shall run to the "inhabitants of the Town of Topsfield."
- d. A certificate signed by the developer that all necessary parties have signed the easement instrument.

The developer shall pay to the Town a filing fee which will be required by the Registry of Deeds for the filing of the proposed grants of easements and passage, to be held in escrow by the Town Treasurer until the Town accepts the streets or ways at the subsequent Town Meeting. The above shall be filed on or before February 1st for inclusion in the Annual Town Meeting.

4.10 Modification, Amendment, or Rescission

The Board, on its own motion or on the petition of any person interested, shall have power to modify, amend, or rescind its approval of a Definitive Plan of a subdivision, or to require a change in a Definitive Plan as a condition of its retaining the status of an approved plan. All of the provisions of the Subdivision Control Law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment, or rescission of such approval and to a plan which has been changed under this section.

No modification, amendment, or rescission of the approval of a Definitive Plan of a subdivision or change in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon; provided, however, that nothing herein shall be deemed to prohibit such modification, amendment or rescission when there is a conveyance or a mortgage to a single grantee or mortgagee or either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the Planning Board.

So far as unregistered land is affected, no modification, amendment, or rescission of the approval of a Definitive Plan nor change in a plan under this section shall take effect until (1) the plan as originally approved, or a copy thereof, and a certified copy of the vote of the Board making such modification, amendment, rescission or change, and any additional plan referred to in such vote, have been recorded; (2) an endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded; and (3) such vote is indexed in the grantor index under the names of the owners of record of the land affected. So far as registered land is affected, no modification, amendment, or change has been verified by the Land Court of Essex County pursuant to Chapter 185, and in case of rescission or modification, amendment, or change not so verified until ordered by the court pursuant to SECTION 114 of said Chapter 185.